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GAWKER MEDIA GROUP, INC.**

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

QUENTIN TARANTINO,
Plaintiff,
v.
GAWKER MEDIA, LLC, et al.,
Defendants.

Case No. CV 14-603-JFW (FFMx)

Judge: Hon. John F. Walter

DEFENDANT GAWKER MEDIA GROUP, INC.'S NOTICE OF MOTION AND MOTION TO DISMISS THE COMPLAINT PURSUANT TO F.R.C.P. RULE 12(b)(2); MEMORANDUM OF POINTS AND AUTHORITIES

[Declaration of Scott Kidder and Proposed Order Filed Concurrently]

Date: March 24, 2014
Time: 1:30 p.m.
Place: Courtroom 16

1 TO THE COURT, THE PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on March 24, 2014 at 1:30 p.m., or as soon
3 thereafter as counsel may be heard, in Courtroom 16 of the above-entitled Court, the
4 Honorable John F. Walter, presiding, Defendant Gawker Media Group, Inc.
5 (“GMGI”) will and hereby does move the Court under the Federal Rules of Civil
6 Procedure, Rule 12(b)(2) for an order dismissing the Complaint of Plaintiff Quentin
7 Tarantino and each claim for relief contained therein against GMGI.

8 A conference pursuant to Local Rule 7-3 took place on February 12, 2014.

9 GMGI’s Motion to Dismiss (“Motion”) is made on the following grounds:
10 pursuant to Rule 12(b)(2), this Court lacks personal jurisdiction over GMGI, a
11 Cayman Islands corporation which is not subject to general jurisdiction because it
12 does not have any continuous and systematic contacts with California and is not
13 subject to specific jurisdiction because it does not publish the website at issue in
14 plaintiff’s Complaint and was not involved in any way with the researching, writing,
15 editing, or publishing of the article that is the subject of plaintiff’s Complaint.

16 GMGI’s Motion is based on this Notice, the attached Memorandum of Points
17 and Authorities, the Declaration of Scott Kidder, on all papers, pleadings, records and
18 files in this case, on all matters of which judicial notice may be taken, and on such
19 other evidence and/or argument as may be presented to the Court at the hearing on
20 this Motion.

21 GMGI respectfully requests that the Court dismiss the Complaint, and each
22 claim for relief contained therein against GMGI, with prejudice and without leave to
23 amend.

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1 DATED: February 19, 2014

LEVINE SULLIVAN KOCH & SCHULZ, LLP
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MEMORANDUM OF POINTS AND AUTHORITIES**SUMMARY OF ARGUMENT**

Plaintiff's Complaint against defendant Gawker Media Group, Inc. ("GMGI") should be dismissed pursuant to Federal Rule 12(b)(2) due to the absence of personal jurisdiction. GMGI is a Cayman Islands holding corporation which does not operate in California and is not subject to general jurisdiction here. Nor is GMGI subject to specific jurisdiction in the circumstances of this action because GMGI played no role in the publication of the challenged news article upon which plaintiff's claim for contributory copyright infringement is predicated.

FACTUAL BACKGROUND

Insofar as is relevant to this motion, plaintiff Quentin Tarantino asserts a claim for contributory copyright infringement against GMGI, which the Complaint acknowledges is "a Cayman Islands corporation, and is a citizen of the Cayman Islands pursuant to 28 U.S.C. [§] 1332(c)." Complaint ("Compl.") ¶ 10. GMGI is the parent company of Gawker Media, LLC, a Delaware corporation also named as a defendant herein.¹ Declaration of Scott Kidder ("Kidder Decl.") ¶ 3; *see also* Compl. ¶ 8.

Plaintiff's contributory copyright infringement claim against GMGI arises out of the public dissemination of his movie script, *The Hateful Eight*, on or about January 21, 2014. Compl. ¶ 16. On this date, plaintiff gave an interview, which was widely reported in the media, to the effect that he had given copies of the script to certain individuals and that the script was now circulating publicly. *Id.*²

¹ Defendant Gawker Media, LLC is not contesting personal jurisdiction in this action. By stipulation with plaintiff previously filed with the Court, Dkt. No. 10, Gawker Media, LLC has been given up to and including March 10, 2014 to otherwise move or respond to the Complaint. Gawker Entertainment, LLC is also named as a defendant herein. Compl. ¶ 9. However, Gawker Entertainment, LLC was dissolved as a corporation in 2013, and counsel for the parties have reached an agreement that Gawker Entertainment, LLC is not a proper party to this action.

² Plaintiff's interview is available at Deadline Hollywood, *Quentin Tarantino Shelves 'The Hateful Eight' After Betrayal Results in Script Leak*,

1 According to plaintiff, on January 22 a Gawker Media, LLC website published
 2 a news article regarding plaintiff's remarks concerning the dissemination of his script.
 3 *Id.* ¶ 17. A subsequent website article following up on the story on January 23,
 4 entitled "Here Is the Leaked Quentin Tarantino Hateful Eight Script," included two
 5 hyperlinks to third-party websites elsewhere on the Internet where the script could
 6 already be found. *Id.* ¶ 19. Plaintiff's contributory copyright infringement claim is
 7 predicated upon Gawker Media, LLC's inclusion in its news article of these
 8 hyperlinks to other websites where the script was available. *Id.* ¶¶ 33-34.

9 Defendant Gawker Media, LLC, the publisher of www.gawker.com, was solely
 10 responsible for writing, editing, and publishing the news article challenged in the
 11 Complaint. *See id.* ¶ 19; Kidder Decl. ¶ 5. By contrast, GMGI did not play any role
 12 in connection with the January 23 news article at issue, be it writing, editing,
 13 publishing the article or including the hyperlinks. *Id.* Moreover, GMGI has no
 14 operations or employees in California or elsewhere. *Id.* ¶ 3. Rather, it is a Cayman
 15 Islands holding company. *Id.* ¶ 2-3. Its sole assets are equity securities in its
 16 subsidiaries, one of which is defendant Gawker Media, LLC. *Id.* ¶ 3. In short, GMGI
 17 does not publish anything, including without limitation the website found at
 18 www.gawker.com. *Id.* ¶ 5.

19 The Complaint contains no allegations which would purport to establish the
 20 existence of personal jurisdiction over GMGI other than the conclusory assertion that
 21 GMGI is "engaged in and doing business and commercial activities in and causing a
 22 direct effect in the County of Los Angeles, State of California." Compl. ¶ 10. The
 23 Complaint also makes the conclusory assertion that Gawker Media, LLC, is "under

24 http://www.deadline.com/2014/01/quentin-tarantino-hateful-eight-leak-novel. The
 25 Gawker Media, LLC publication upon which plaintiff's claim is predicated, *see*
 26 Compl. ¶ 19, is available at *Here is the Leaked Quentin Tarantino 'Hateful Eight'*
Script, http://defamer.gawker.com/here-are-plot-details-from-quentin-tarantinos-
 27 leaked-1507675261. *See also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S.
 308, 322, 127 S. Ct. 2499, 2511, 168 L. Ed. 2d 179 (2007) (noting that courts may
 take judicial notice of "documents incorporated into the complaint by reference").

28

1 the control of defendant” GMGI, *id.* ¶ 11, and it otherwise refers to the three Gawker
 2 defendants named in the Complaint interchangeably and without identifying which
 3 allegations are asserted against GMGI specifically, *see, e.g., id.*

4 **ARGUMENT**

5 **I. THE COURT SHOULD DISMISS PLAINTIFF’S COMPLAINT AS TO
 6 GAWKER MEDIA GROUP, INC. BECAUSE IT LACKS PERSONAL
 7 JURISDICTION OVER THAT ENTITY**

8 Plaintiff’s claims against GMGI should be dismissed because plaintiff cannot
 9 carry his burden of showing that GMGI has sufficient “minimum contacts” to subject
 10 it to jurisdiction in this forum. “Where a defendant moves to dismiss a complaint for
 11 lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that
 12 jurisdiction is appropriate.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d
 13 797, 800 (9th Cir. 2004). While a plaintiff “need only make a *prima facie* showing of
 14 jurisdictional facts,” a plaintiff “cannot ‘simply rest on the bare allegations of its
 15 complaint’” that are contradicted by a defendant’s declaration. *Id.* (internal quotation
 16 marks and citations omitted). And, “nonspecific conclusory statement[s]” are
 17 insufficient to support a finding of jurisdiction. *Butcher’s Union Local No. 498,*
 18 *United Food & Commercial Workers v. SDC Inv., Inc.*, 788 F.2d 535, 540 (9th Cir.
 19 1986).

20 California’s long arm statute allows jurisdiction to be exercised to “the limits
 21 of due process.” *Doe v. Unocal Corp.*, 248 F.3d 915, 923 (9th Cir. 2001). When a
 22 non-resident defendant is haled into court, due process requires that a defendant have
 23 “certain minimum contacts with the forum such that the maintenance of the suit does
 24 not offend traditional conceptions of fair play and substantial justice.” *Id.* (quoting
 25 *Int’l Shoe Co. v. State of Wash.*, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95
 26 (1945)).

27 If a defendant’s conduct in the forum state is “continuous and systematic,” it
 28 may properly be subject to general jurisdiction; alternatively, if a defendant directs its

1 conduct at the forum state and that conduct is the subject of the suit, it may be subject
 2 to specific jurisdiction. *Id.*

3 Here, plaintiff does not allege facts supporting the exercise of general
 4 jurisdiction over GMGI. Plaintiff's complaint contains no factual allegations
 5 demonstrating that GMGI owns property in California, has offices in California,
 6 conducts business in California, solicits business in California, or has any other
 7 continuous and systematic contacts with California. And indeed GMGI does not.
 8 Kidder Decl. ¶ 3. While plaintiff asserts in a conclusory fashion that GMGI is
 9 "engaged in and doing business and commercial activities in and causing a direct
 10 effect in the County of Los Angeles, State of California," Compl. ¶ 10, no facts are
 11 pled with respect to what business or commercial activities GMGI is purportedly
 12 engaged in or how they theoretically cause a direct effect in California, *id.*

13 Thus, there can be no general jurisdiction here, as plaintiff has not pled facts
 14 establishing that GMGI's activities, whatever they are alleged to be, are "continuous
 15 and systematic." *See SDC Inv., Inc.*, 788 F.2d at 540 (affirming dismissal of
 16 complaint on jurisdictional grounds where plaintiffs relied on conclusory allegations);
 17 *see also, e.g., Daimler AG v. Bauman*, 134 S. Ct. 746, 761-62 (2014) (no general
 18 jurisdiction where defendant corporation did not have such "continuous and
 19 systematic" contacts with the forum to render it "at home" there); *Osborne v. Nat'l
 20 Truck Funding, LLC*, No. 2:12-CV-02510-AC, 2013 WL 3892946, at *5 (E.D. Cal.
 21 July 26, 2013) (no general jurisdiction where plaintiff alleged the defendant "solicited
 22 business in the State of California"); *cf. Otter Prods. LLC v. Custom Offshore Tackle
 23 LLC*, No. CV 12-9311 GAF (AJWx), 2013 WL 815910, at *3 (C.D. Cal. Mar. 4,
 24 2013).

25 In the absence of general jurisdiction, plaintiff must allege facts supporting the
 26 exercise of specific jurisdiction over GMGI. The Ninth Circuit has established a
 27 three-part specific jurisdiction test:
 28

- 1 (1) The non-resident defendant must purposefully direct his activities or
 2 consummate some transaction with the forum or resident thereof; or
 3 perform some act by which he purposefully avails himself of the
 4 privilege of conducting activities in the forum, thereby invoking the
 5 benefits and protections of its laws;
 6 (2) the claim must be one which arises out of or relates to the
 7 defendant's forum-related activities; and
 8 (3) the exercise of jurisdiction must comport with fair play and
 9 substantial justice, i.e. it must be reasonable.

10 *Schwarzenegger*, 374 F.3d at 802 (citation omitted). The plaintiff must prove prongs
 11 one and two, at which point the burden shifts to the defendant to show that the
 12 exercise of jurisdiction would not be reasonable. *Burger King Corp. v. Rudzewicz*,
 13 471 U.S. 462, 477, 105 S. Ct. 2174, 2184-85, 85 L. Ed. 2d 528 (1985).

14 Dismissal is appropriate here because plaintiff alleges no facts showing that
 15 GMGI purposefully directed its activities at the forum or availed itself of the
 16 privilege of conducting business in the forum. As noted, plaintiff alleges only in
 17 passing that GMGI is “engaged in and doing business and commercial activities in
 18 and causing a direct effect in the County of Los Angeles, State of California.”
 19 Compl. ¶ 10. This conclusory allegation is not sufficient as a matter of law. *See, e.g.*,
 20 *In re W. States Wholesale Natural Gas Antitrust Litig.*, Nos 2:06-CV-0233, 2:03-CV-
 21 1431, 2007 WL 2445953, at *9 (D. Nev. Aug. 17, 2007) (rejecting as insufficient
 22 conclusory allegations that specific jurisdiction was appropriate); *cf. DFSB Kollective*
 23 *Co. v. Yang*, No. 11-CV-01051 CW (NC), 2012 WL 1835710, at *2 (N.D. Cal. May
 24 21, 2012) (ordering plaintiffs to show cause why copyright infringement claim should
 25 not be dismissed for lack of personal jurisdiction where plaintiffs made conclusory
 26 allegation that defendants were “doing business” in the district).

27 Moreover, dismissal is appropriate because plaintiff has not pled any facts (of
 28 which there are none) demonstrating that his claim arose out of or relates to GMGI’s

1 forum-related activities. Although plaintiff groups defendants together and refers to
2 them collectively as “Gawker Media” throughout the Complaint, *see Compl.* ¶ 11,
3 plaintiff alleges no facts supporting the conclusion that GMGI specifically had any
4 involvement in writing the news article contested in the Complaint. In fact, the only
5 allegation in the Complaint which appears intended to suggest that specific
6 jurisdiction could possibly lie here is that “Gawker Media, LLC . . . [was] and [is]
7 under the control of defendant Gawker Media Group, Inc.” *Id.* First, this allegation
8 is conclusory. *See In re W. States Wholesale Natural Gas Antitrust Litig.*, 2007 WL
9 2445953, at *9. And, even if this allegation was not conclusory, it “is well-
10 established that a parent-subsidiary relationship alone is insufficient to attribute the
11 contacts of the subsidiary to the parent for jurisdictional purposes.” *Harris Rutsky &*
12 *Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1134 (9th Cir. 2003).
13 The only exceptions to this rule (not applicable here, however) are where the plaintiff
14 pleads sufficient facts showing that the subsidiary is simply the alter ego of the
15 parent, or where the subsidiary can be said to be the “general agent of the parent.” *Id.*
16 Plaintiff makes no attempt to plead specific facts showing that either is the case here,
17 nor can he. Therefore, specific jurisdiction does not exist and plaintiff’s Complaint
18 must be dismissed as against GMGI. *See, e.g., Koller v. W. Bay Acquisitions, LLC*,
19 No. C 12-00117 CRB, 2012 WL 2862440, at *5-6 (N.D. Cal. July 11, 2012)
20 (dismissing complaint where plaintiff did not undergird his jurisdictional allegations
21 with specific supporting facts).

CONCLUSION

23 Because GMGI is not subject to general or specific jurisdiction, GMGI
24 respectfully requests that this Court dismiss the Complaint for lack of personal
25 jurisdiction pursuant to Federal Rule 12(b)(2).

1 DATED: February 19, 2014

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